

## The Constitutional Question

Summary of the Arguments Presented at the Supreme Court.

The HOME GUARD has already given a summary of the case now before the Supreme Court regarding the respective constitutional authority of the Provincial Legislatures and the Dominion Parliament to enact prohibition laws, giving a full list of the questions submitted for decision, and also the contentions of the Provincial and Dominion authorities. We were not correct, however, regarding the position of Ontario. It was not one of neutrality, as was at first represented, but on the other hand, it claims the legal authority to prohibit the sale, retail and wholesale, and also the manufacture and importation. In fact, "Ontario claims the whole earth" in this matter of prohibition. We shall soon see what the Supreme Court decides on.

As the question is one of such great importance in regard to all future liquor legislation we desire to give a good summary of the arguments presented by the various counsels at the Supreme Court. We have not seen a more comprehensive and concise one than that published in The Advocate of last week. We will therefore reproduce the most of it.

**THE DOMINION POSITION.**  
For the Dominion Government the Hon. J. J. Curran, Solicitor-General, appeared. It will be seen that he went much farther than was generally expected in conceding that the Provincial Legislatures have the right to absolutely prohibit the sale by retail. This was at one time much disputed. The Advocate reports him as follows:

The Solicitor-General, Hon. J. J. Curran, opened the argument for the Ottawa Government by stating among other things, that the Dominion conceded to the Province the absolute right to prohibit the retail sale of liquor and claimed only the right to control the wholesale sale, together with the manufacture and importation of liquor which belonged to the Dominion as a branch of trade and commerce. He admitted that the local option law was valid, inasmuch as it purported to prohibit only the retail sale, and did not interfere with the wholesale, which drew the line at ten gallons, as laid down in the Canada Temperance Act.

**ONTARIO'S POSITION.**  
The Attorney-General of Ontario, Sir Oliver Mowat, contends (1) that the Provincial Legislature has power to prohibit the sale within the Province of intoxicants; (2) that it has such jurisdiction regarding portions of the Province in which the Canada Temperance Act is not in operation; (3) that it can prohibit manufacture, and (4) that it has power to prohibit importation.

**DR. MACLAREN'S ARGUMENT.**  
Counsel for the Province of Ontario, Mr. J. J. MacLaren, argued that the Provincial Legislature had exclusive control both of the wholesale and retail trade, as well as of the manufacture and possibly of the importation, while the counsel for the Province of Quebec took the same view as the Solicitor-General. Mr. MacLaren acknowledged that the decision of the Privy Council of England on the McCarthy Act of 1883 had shown that there was a substantial difference between wholesale and retail, but that the control of both belonged to the Province. He held that the Provinces had the power under the head of the municipal institutions, which were meant to include municipal powers as they existed in the several Provinces, especially in Upper and Lower Canada, before Confederation. The municipalities in these Provinces had the power of prohibition, which still continued, as it was not expressly taken away from them. He also claimed that the Provinces had the right to deal with the subject under the head of matters of a local nature, and that so long as the Dominion did not pass a prohibitory law, the Provinces had the right to do so as a local matter. He referred to the Pharmacy Acts in the various Provinces, by which the sale of poisons was restricted, substantially as was proposed in the case of the prohibition of liquor under the legislation suggested. The constitutionality of the laws relating to the sale of poisons had been questioned in the courts of Quebec, and there the rights of the Provinces had been maintained. He went on to argue that a prohibitory law would be within the jurisdiction of the Provinces as dealing with a merely local matter. If it should be claimed that such prohibitory legislation does not come within the sub-sections quoted on account of its being covered by "the regulation of trade and commerce," the best answer is to be found in the case cited, where it says that regulation of trade and commerce may have been used in some such sense as the "regulations of trade" in the Act of Union between England and Scotland, and as these words have been used in the acts of states relating to trade and commerce. This article enacts that all subjects of the United Kingdom shall have full freedom and intercourse of trade and navigation to and from all places in the United Kingdom and colonies, under prohibitions, restrictions and regulations of trade. Parliament, he claimed, had frequently passed laws affecting and regulating specific trades in one part of the

United Kingdom only, without it being supposed that it thereby infringed the articles of union. Constructing, therefore, the words "regulation of trade and commerce" by various aids to their interpretation above suggested, they would include political arrangements in regard to trade requiring the sanction of Parliament, regulation of trade in matters of interprovincial concern, and it may be that they would include general regulation of trade affecting the whole Dominion.

**MR. CARTWRIGHT'S POSITION.**  
Deputy Attorney-General Cartwright continued the argument for Ontario. He contended that the British North America Act in no way intended to cut down the powers of any municipality, and the highest courts of the realm had held that the powers still remained in the municipalities. No one could deny now that the whole question of licenses was in the hands of the Provinces, consequently it could not be contended that this was within trade and commerce regulations for the purposes of prohibition. If the Province can prohibit the sale on polling day and Sunday, why not Monday or any other day? And if it can stop the sale to a drunkard or a minor, why not to other persons?

**QUEBEC'S CONTENTION.**  
Mr. L. J. Cannon, for Quebec, said that Solicitor-General Curran admitted all that Quebec claimed and a little more. Quebec claims the right to control the retail sale of intoxicating liquors, and to limit the number of licenses issued to the wholesale. His Province had defined what was wholesale and what was retail, and power was given to all municipalities to prohibit the retail sale, or in other words, to issue no licenses for the sale of less than two imperial quarts. This was taken from the Dunkin Act, minus the quantity. The Province of Quebec thought total prohibition of any article was the suppression of trade and commerce, and was beyond the power of the Provincial Legislature. During the course of Mr. Cannon's argument Chief Justice Strong said that wherever the licensing power was, there also was the power to prohibit, limiting that power to the retail trade.

**THE LIQUOR DEALERS' OBJECTIONS.**  
Mr. Wallace Nesbitt addressed the court on behalf of the brewers and distillers. He contended that the right to prohibit both wholesale and retail selling lies with the Dominion. Mr. Saunders followed in the same line, and asked for a strict construction of the British North America Act, contending that the Canada Temperance Act and the Ontario Local Option Law were statutes which clashed, and that in matters of such vast importance the Local Legislature had to give way to the Federal Government.

The Advocate remarks: "The attitude in part taken by the Dominion Government was somewhat of a surprise, placing as it did the entire onus of resisting the doctrine that the Provinces had the right to control the retail trade upon the counsel for the Distillers and Brewers' Association."

"The counsel for the distillers and brewers, as will be seen, contended that there is no distinction between wholesale and retail, and they produced high authority in support of this view."

"Whatever the result may be the case is certain to be carried to the Imperial Privy Council, who will be called upon to finally decide what the Provincial and Dominion rights in the premises really are."

Nearly four days were occupied in hearing the arguments, of which the foregoing summary is a brief outline. The judges have now the subject under consideration and may reasonably be expected to give judgment at the September session. As the question, in its various forms, has been so many times before them it seems as though a longer time would be unreasonable. The whole country will wait with interest for that decision.

*There is great fret and worry in always running after work; it is not good intellectually or spiritually.*—[ANNIE REACY.]

**To Young Writers.**  
A Miss Kendall, a wealthy New York lady, has arranged to give a valuable gold medal for the best essay prepared by any boy or girl between the ages of 14 and 18 years on, "The attitude of the Bible toward man's treatment of dumb animals." The HOME GUARD will be glad to hear of some bright young Canadian successfully competing in this matter. We have no doubt but the competition is open to them also.

Essays are limited to from 2,000 to 3,000 words. They must not be signed, but the name, address and age of the writer must be sent on a separate sheet, in a sealed envelope, and also an American postage stamp in case the return of the manuscript is desired.

These essays must be sent by the 15th of August next, addressed to Mrs. Emanuel Friend, 584 Jackson street, Milwaukee, Wis., to be examined by a committee appointed for the purpose. We fancy that further information can be obtained by addressing that lady. Would it not be well for our Canadian W. C. T. U. to interest bright boys and girls in this matter? The study and preparation of such essays would result in much good, anyway.

Specimens of literature of this class can be procured by addressing, with stamp, Mary F. Lovell, box 163 Bryn Manor, Penn.

## Presbyterianism and Prohibition.

Action of the Toronto and Kingston Presbytery Last Week.

At the meeting of the Toronto and Kingston Presbytery, held in Westminster Church, Toronto, recently, a very able and elaborate report of the committee of temperance was presented by Rev. Wm. Frizzell, the chairman. The report sets out by reference to the pleasing fact that the Provincial plebiscite in January gave a majority of 81,769 for prohibition, and that every city which are considered the strong-holds of the liquor traffic, gave a majority, with the single exception of Windsor.

**ALL WANT PROHIBITION.**  
The report goes on to state that the third question sent out to the sessions was as follows:

"What do you regard as the best method of preventing the indiscriminate sale and use of intoxicating liquors?"

The committee reported on this question as follows:

"Prohibition" is the prevailing answer to this question. All the sessions in the Presbyteries of Algoma, Lindsay, Kingston and Owen Sound regard prohibition as the best method of preventing the indiscriminate sale and use of intoxicating liquors. The same view is taken in 21 out of 25 sessions in Guelph Presbytery; by 32 sessions out of 42 in Toronto, by all but one session in Orangeville; by 10 in Saugeen; and by 16 in Barrie. Whitty gives no figures, as the full report by mistake was sent on to the General Assembly's convener on temperance. Among the sessions that do not commit themselves to prohibition, we have such methods as these suggested: 'Better enforcement of the license law.' 'Educate the youth in our schools and homes in the principles of total abstinence.' Let the public conscience be more enlightened on the subject.' One session favors 'the placing of the sale of liquor in the hands of salaried government officials.' Another suggests 'high license.' Your committee is gratified to find such a consensus of opinion in favor of prohibition as the best method of preventing the indiscriminate sale and use of intoxicating liquors."

### ABOUT LEGAL ENFORCEMENT.

On this subject the report was as follows: "In summarizing the views of sessions on this question, it may be said, the vast majority are of opinion that prohibitory measures could be enforced, and that our people would give hearty moral support to officers in carrying them out. One Presbytery report voices the views of the people thus: 'The members and adherents of our congregations are, almost to a man, quite confident that prohibition can be legally enforced, and with most satisfactory results, and they are ready to give moral support to officers in enforcing it.' Another says: 'There seems to be a general conviction that such a law could be enforced, and that the people, as a whole, would give strong moral support to officers who were honestly seeking to enforce the law.' Some would make the appointment of faithful officers, in sympathy with temperance sentiment, a condition of proper enforcement. Others speak with a good deal of caution, in view of failures in the past to enforce local option laws. On the whole, however, the views our sessions take of this question are encouragingly optimistic."

### SOME RECOMMENDATIONS.

Among the recommendations contained in the report were the following: That our people be advised to look out for men, as members of Parliament, who will put the principle of prohibition above party, and accordingly will vote against their political party, if necessary, in order to secure the triumph of the aforesaid principle.

That this synod, having learned with satisfaction that an overwhelmingly large proportion of sessions are in favor of a prohibitory law, earnestly looks to the Government having jurisdiction in the matter to embody the wishes of our people in such a law, at an early date, and would further assure such a Government of our hearty moral support in its enforcement.

That while we rejoice at the constantly growing temperance sentiment among our congregations, we would as constantly remind them of the importance of keeping the Gospel in the foreground as the great remedy for all moral evils.

The question of the adoption of the report came up for discussion and Rev. D. J. Macdonnell, of Toronto, who has long opposed both total abstinence and prohibition, gave the only dissenting vote. The vote stood 80 to 1 in its favor.

Rev. Mr. Duncan, of Tottenham, moved a non-committal amendment advising Presbyterian adherents to use all legitimate means to secure the triumph of prohibition. This got only four votes.

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## As Others See Us.

The Scottish Reformer, of Glasgow.

A leading Scottish temperance journal that pays a good deal of interest to Canadian affairs, has just been remarking about the prohibition movement as it now appears in this Dominion. After referring to the enactment of the Dunkin Act in 1864, the Scott Act of 1878, and the McCarthy License Act of 1883 it goes on to speak of the sweeping recent plebiscite verdicts of 12,500 in Manitoba, 82,000 in Ontario, 7,000 in Prince Edward Island, and 30,000 in Nova Scotia, and then expresses astonishment that in the face of all these the Dominion Government still remains unmovable.

Referring to the recent prohibition deputation to Sir John Thompson and his answer, the Reformer goes on to say:

"With brutal frankness their demand was bluntly refused, as the Government could not run the country were the contribution to the revenue of the drink traffic cut off by prohibition. The sum involved is only £1,800,000, but it is at present a sufficient barrier to prohibition. We believe that, though repulsed, the Canadians have no intention to succumb. They will, we hope, use the laws they have—especially the Scott Act—and, at the same time, continue their appeal to the people till they rouse them to refuse to meet the expense of the country at the cost of the shame and dishonor of their women, and the debasement and deterioration of their men. Their revenue will no longer rest upon the slavery, ruin, and destruction of their people."

## French Wines and Temperance.

The idea at one time prevailed pretty generally, even among the most intelligent Canadians, that the free introduction of light wines, especially French wines, would do a great deal towards making people more temperate. It is now an argument, among a few of the less thoughtful people especially, in favor of the adoption of the new French treaty, that the free use of these wines would destroy the demand for the more fiery and intoxicating distilled liquors. Such people seem to overlook the fact that the use of any kind of alcoholic drinks is almost sure to create an appetite for stronger ones.

Wine drinking too often ends in a thirst and demand for spirit drinking. That has been the experience of France during the past few years; it is its experience to-day. English writers who so frequently remarked the absence of drunkenness in France compared to England, were writers of years ago. Now things have changed.

We cannot do better here than quote from the Paris Temps, one of the most leading and reliable journals in France. In a recent article, writing on the decline in population in that country, without any special reference to the temperance question, it went on to say that: "A deplorable change has occurred in France regarding indulgence in strong drink. Thirty or forty years ago France, thanks to its wine and cider, was considered the most sober nation in the world, and the gayety, vigor and elasticity of the race were a result of its temperance. To-day France has changed places with Great Britain. Within the last twenty years the consumption of alcoholic drinks in England has diminished by one-half, and now France stands almost at the head of the list, with 4.56 litres consumption per head, while in Great Britain the figure is only 2.70 litres, in the United States 2.82, in Russia 3.07, in the Netherlands 4.49, in Belgium 4.91, in Germany 4.40. The increase in the annual consumption of alcohol in France has been from 1,400,000 hectolitres in 1835 to 1,735,369 in 1892. Within the same time the number of liquor sellers has increased from 390,000 to more than 450,000, which makes a seller to every twenty voters throughout France. The Temps brings all these facts in connection with the population question and suggests that they help to account for the fact that the population of France has ceased to grow. Last year there were 20,000 more deaths than births. As it is known that in Australia, America and Africa whole nations have been destroyed by alcohol, the Temps thinks it is time for the French to stop laughing at the English temperance movement, which has taught the working classes to substitute tea and coffee for alcohol."

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### ANALYSTS.

O. S. JAMES, GRADUATE, S.P.S., AN-ALYTICAL chemist, room D, 19 and 21 Richmond street east, Toronto. Residence, 102 Howard street. Phone 1,767. G 1411

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